UNITED
NATIONS

CCPR

International covenant
on civil and
political rights

Distr.
GENERAL

CCPR/C/SR.1603
29 July 1997

Original: ENGLISH

HUMAN RIGHTS COMMITTEE

Sixtieth session

SUMMARY RECORD OF THE 1603rd MEETING

Held at the Palais des Nations, Geneva,
on Thursday, 24 July 1997, at 10 a.m.

Chairman: Mrs. CHANET

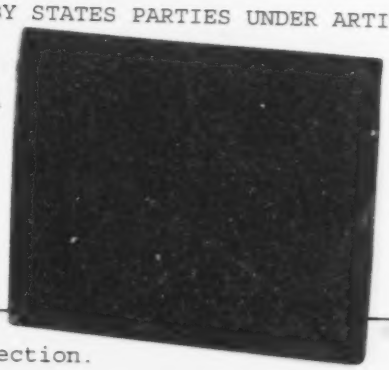
later: Mrs. MEDINA QUIROGA

later: Mrs. CHANET

CONTENTS

CONSIDERATION OF REPORTS SUBMITTED BY STATES PARTIES UNDER ARTICLE 40 OF THE COVENANT (continued)

Third periodic report of India



This record is subject to correction.

Corrections should be submitted in one of the working languages. They should be set forth in a memorandum and also incorporated in a copy of the record. They should be sent within one week of the date of this document to the Official Records Editing Section, room E.4108, Palais des Nations, Geneva.

Any corrections to the records of the public meetings of the Committee at this session will be consolidated in a single corrigendum, to be issued shortly after the end of the session.

GE.97-17510 (E)

The meeting was called to order at 10.05 a.m.

CONSIDERATION OF REPORTS SUBMITTED BY STATES PARTIES UNDER ARTICLE 40 OF THE COVENANT (agenda item 4) (continued)

Third periodic report of India (CCPR/C/76/Add.6)

1. At the invitation of the Chairman, Mr. Desai, Mr. Krishan Singh, Mr. Gupta, Mr. Venu, Mr. Singh Gill and Mrs. Chadha (India) took places at the Committee table.

2. The CHAIRMAN welcomed the Indian delegation and expressed appreciation for the high level of its members. The Committee recognized India's efforts in the field of human rights, and was in particular honoured to have Mr. Bhagwati as one of its current members.

3. Mr. DESAI (India) said that India attached the highest importance to its reporting obligations under the Covenant and other international instruments to which it was a party, believing that the system of treaty bodies was the most valuable element in the international community's efforts to promote and protect human rights. It was 50 years since India had achieved independence. Because of its large population, currently one sixth of mankind, and its wide diversity of languages, religions and development levels, the nation's immense task of achieving economic progress, social transformation and full political democracy was unique for a country of that size. India had sought continually to attain the goals set out in the Preamble to its Constitution, and principally in part III (Fundamental Rights) and part IV (Directive Principles of State Policy). Although the tasks facing India could sometimes raise human rights issues, any violation of those rights was contrary to State policy and subject to scrutiny and redress in an open society based on the rule of law.

4. The procedures established under the International Covenants on Human Rights not only provided mechanisms for reviewing States parties' fulfilment of their obligations but enabled the treaty bodies to understand the challenges faced by States in attaining their objectives. The constructive dialogue thus engaged in inspired existing State parties and encouraged more States to become parties to the Covenants. The Supreme Court of India had drawn increasingly on the provisions of international instruments, and the ordinary courts had frequently turned to the International Covenant on Civil and Political Rights and the Convention on the Elimination of All Forms of Discrimination against Women as guides in interpreting domestic legislation.

5. The Indian parliamentary election held in April and May 1996, involving an electorate of 591 million, had been the largest democratic election in history. A new Government, committed to decentralization and consensus-building on national issues, had come to power as a coalition based on a Common Minimum Programme. Chief ministers of the federal states had assembled more often than ever before to formulate national policies. The Government had continued and enhanced the process of economic reform to ensure better living standards and a humane, just society. It had decided to become a signatory to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, in fulfilment of the commitment made in the Common Minimum Programme.

6. Every citizen had the right to stand for election and the right to vote in the periodic elections to the three levels of government - local, state and Union - established under the Constitution. All states of the Union participated fully in parliamentary elections, had their own democratically-elected assemblies, and were self-governing in matters such as public order, police, local government, agriculture, land and certain taxes.

7. As noted in paragraph 8 of the third periodic report, treaties were not self-executing in India. In two recent decisions, however, the Supreme Court had ruled that the Covenant's provisions which elucidated and gave effect to the fundamental rights guaranteed by the Constitution were enforceable in that regard, and that those of customary law not contrary to municipal law were deemed incorporated in domestic law.

8. The National Human Rights Commission had been acting with considerable success, using its own investigative machinery. It required state governments to report cases of custodial death or rape within 24 hours of occurrence, failing which an attempt at suppression was to be assumed. It had made specific recommendations about the way in which human rights violations could be minimized or ended, and on how the armed forces should interact with the civil administration in areas of insurgency or terrorism. It had also recommended specific police reforms, visited detention centres and suggested legislative changes and other measures to improve imprisonment and detention conditions. It had vigorously taken up issues pertaining to children's rights and instituted efforts with the police, paramilitary forces and the army to impart human rights education. Six states had set up state human rights commissions, and in several states human rights courts had been notified. Two states and two Union Territories had set up district-level committees to monitor human rights.

9. One third of all elective offices in Panchayats and other local bodies had been reserved for women through an amendment to the Constitution; as a result, some 800,000 women had entered public life. A bill to establish similar quotas in the federal and state legislatures was before Parliament. India's first periodic report under the Convention on the Elimination of All Forms of Discrimination against Women would be submitted shortly. And Parliament had recently set up a joint committee to monitor government measures to improve the status of women and to consider reports by the National Commission for Women.

10. In the light of the discussions on the previous periodic report, the current report dealt in detail with special legislation. It emphasized, in the context of the public demand for a legal and constitutional response to intense terrorist violence in some parts of India, that the relevant statutes were enacted by a democratically-elected Parliament, applied to limited areas, were subject to periodic review, and could be challenged before the high courts and the Supreme Court. The Terrorist and Disruptive Activities (Prevention) Act (1987) had lapsed in May 1995; over 20,000 cases under that Act had been dropped after review, and less than 1,600 persons were still detained under it. A Supreme Court judgement on 27 February 1996 had laid down detailed directives on questions of bail in such cases. The Supreme Court would shortly decide on the validity of the Armed Forces (Special Powers) Act (1958) at a hearing in which the National Human Rights Commission

might be a party. That court had also recently ruled that the right to health was integral to the right to life and that the latter included the right to live with dignity.

11. No effort was spared to investigate cases of violation by the security forces of the right to life and to prosecute those believed responsible. In response to National Human Rights Commission directives, 13 states and 1 Union Territory had decided to film all post-mortem examinations in such cases and submit the film with the written report to the Commission. The Ministry of Home Affairs was considering a parliamentary committee report on a bill to amend section 176, clause 21, of the Code of Criminal Procedure so as to make a judicial inquiry mandatory in cases of death, disappearance or rape in police custody. In a recent case, the Supreme Court had held that any form of torture would contravene article 21 of the Constitution, and had set out detailed requirements relating to all cases of arrest and detention, failure to comply with which would render the responsible official liable to departmental action and guilty of contempt of court.

12. Other cases mentioned in the report related to India's obligations under articles 6, 7 and 9 of the Covenant. Inter alia, the right to compensation had been strengthened by recent case law. Although, as reflected in India's declaration relating to article 9, there was no statutory right to compensation for unlawful detention, the courts did award compensation for violation of a constitutional right. And a bill currently under study by a parliamentary committee would provide for compensation to victims of unlawful arrest and detention.

13. With reference to article 10 of the Covenant, the Supreme Court had recently recommended the publication of a national prison manual aimed at dealing with overcrowding by streamlining the system of remission and early release. It had asked the Government to replace the Prisons Act of 1884 and the state governments to amend their respective legislation accordingly and to establish open-air jails in every district. The National Human Rights Commission had investigated the country's prison conditions and was drafting a model bill, based inter alia on the Standard Minimum Rules for the Treatment of Prisoners. Under the Constitution, prisons were a matter for the states, but the central Government provided them with financial assistance. It had also signed bilateral convict transfer agreements with Spain and the United Kingdom, and proposed to sign more; arrangements under such agreements required the prisoner's consent.

14. After some 10 years' study, legislation on freedom of information would be introduced in Parliament during its current session, based on the recommendations of a working group. In the meantime, all federal ministries and departments were being asked to provide public information facilities. And a new bill was aimed at setting up a statutory body to regulate broadcasting, based on the right of the public to receive as well as transmit information.

15. In the context of article 24 of the Covenant, India had recently submitted its first periodic report under the Convention on the Rights of the Child. Some recent Supreme Court judgements were pertinent to that subject, including decisions on the right to free, compulsory education for children up

to the age of 14 and decisions on payments awarded to a welfare and rehabilitation fund in cases of contravention of the Child Labour (Prohibition and Regulation) Act (1986). A conference of state labour ministers, secretaries and commissioners had been held in January 1997 on action to give effect to Supreme Court directives regarding withdrawal of children from hazardous occupations and improvements in the working conditions of children in non-hazardous occupations.

16. In 1993, Parliament had, through a constitutional amendment, placed village self-rule on a statutory basis, but the decentralization of power had not been extended to the tribal areas specified in the Constitution. An Act passed by Parliament in December 1996, however, provided that the basic unit of village community government would be an assembly having authority to deal with everyday affairs, manage natural resources, adjudicate disputes, plan and execute development programmes, and oversee government development activities in its area. Education and health would have priority in resource allocation. Development land acquisition, and the licensing of the mining of minor minerals in the area, would be subject to local consultation.

17. Since completion of the current report, the Government had invited the former United Nations High Commissioner for Human Rights to visit India in May 1995. In addition, the Commission on Human Rights had received a report from its Special Rapporteur on the question of religious intolerance, who had visited India in December 1996; the report noted the generally satisfactory situation with regard to religious tolerance and non-discrimination. Several international NGOs had also visited India during the period. The Government had signed a memorandum of understanding with ICRC, allowing the latter to visit prisons and detention centres in Jammu and Kashmir.

18. To deal with dissent, India had evolved a system based on the enhanced participation of people in determining their destiny and on equitable socio-economic development. In Punjab, the normalization process begun in 1992, after a decade of violence, had been consolidated; the outcome of municipal, state and central parliamentary elections had shown overwhelming support for peace and normality. Since the new coalition government's accession in Punjab in February 1997, the State was witnessing a tremendous upsurge in social, political, cultural and economic life. But the question of accountability for human rights violations during the period of violence had not been neglected; a State human rights commission had been set up, and the Supreme Court was directly supervising actions to deal with past human rights abuses through the National Human Rights Commission and the federal Central Bureau of Investigation. In the north-east, an unconditional dialogue had been initiated with militants, and a multi-billion rupee economic package for the region had been announced, the aim being to tackle the underlying causes of extremism, seek political solutions and increase efforts for all-round economic development. A high-level committee had been set up to look into the problems of the educated unemployed, as well as a high-level commission to examine the backlog in basic minimum services and infrastructure shortages.

19. The people of Jammu and Kashmir, in the elections held in 1996, had resolutely rejected violence. Under the Government of Mr. Farooq Abdullah, a State human rights commission had been set up by an enactment of the State Assembly, and measures aimed at greater State and regional authority were

being studied. Initiatives had been taken to improve detention conditions and review cases. Although violence had not yet ceased, organized militancy had declined, most remaining militants being foreign nationals and mercenaries. Over 1,200 militants had surrendered their arms, and the State government had launched programmes for their rehabilitation. Cases of detainees were being completely reviewed, all persons charged with minor offences being released. Such measures, together with strict supervision of the security forces, should help to check human rights violations. But incidents of abuse were neither ignored nor condoned; action was taken against those responsible.

20. His delegation would endeavour to answer any further questions the Committee might have with regard to the report and the additional information provided.

21. The CHAIRMAN thanked the representative of India for his detailed presentation and invited replies to the questions in part I of the list of issues (CCPR/C/59/Q/IND/4).

22. Mr. DESAI (India), replying to question 1, said that, despite the serious challenges to national security and public order, no state of emergency currently existed; nor had such a state existed in any part of the country during the period under review. He outlined the constitutional provisions governing the declaration of a state of emergency and the consequences, stressing that the right pertaining to life, liberty and dignity of the individual could not be suspended by such a declaration, were one to be made. It followed from what he had just said that there had been no use of the notification procedure laid down in article 4, paragraph 3, of the Covenant.

23. The legislation alluded to by the Committee in its question was described in paragraphs 49 to 57 of the report (CCPR/C/76/Add.6) and related mainly to the Armed Forces (Special Powers) Act and the National Security Act. Although designed to enable law enforcement agencies to deal with special situations and crimes, it should not be confused with emergency legislation.

24. Outlining the situations in which the Armed Forces (Special Powers) Act could be applied and the manner of its application, he said that while arrangements for law enforcement, the maintenance of law and order, and internal security were primarily the responsibility of the state governments, the armed forces of the Union Government, which comprised the total security apparatus of the country and not just the army, had been deployed from time to time to assist the civil authorities in states facing particularly severe and prolonged threats to law and order or confronted with acts of violence or terrorism. The Act served as an enabling statute and could only be applied in "disturbed" areas. That description, which must be officially determined and declared, which was subject to scrutiny by Parliament and the media, and which was regularly monitored for continuing applicability, principally concerned parts of Punjab, Jammu and Kashmir, and the north-eastern states. The Act did not create any new penal provisions or confer extraordinary powers, other than giving police authority to the central forces. Nor did it detract from the due process of law or suspend any rights or their enforceability. Nevertheless, the Union Government was keen to

see a reduction in recourse to the Act that resulted in interventions by paramilitary forces and the army; to that end, a number of measures, which he described, had been taken to strengthen the preparedness and self-reliance of state police forces.

25. In sum, then, public order and policing were normally matters handled by the different states; the Armed Forces (Special Powers) Act was invoked only in extreme cases where the assistance of the central forces was required.

26. Safeguards were also described in the report before the Committee. He reiterated that the above-mentioned Act was applicable only in notified areas where "disturbed and dangerous conditions" prevailed and had been duly identified as such by the highest authority in the state concerned. The activities which the armed forces were empowered to move against under the Act were enumerated; the need to intervene must be officially established; intervention must be preceded by warnings; and the powers conferred by the Act could not be construed as giving licence to shoot to kill, or - as had been alleged - to act against a lawful assembly such as a family gathering, or to arrest or shoot at anyone carrying any object that might resemble a weapon. Any arrests or seizures of property must be the subject of depositions, without delay, to the local police. Further safeguards existed in the form of the internal guidelines and rules of engagement issued by the armed forces themselves.

27. The National Security Act, which had also been the subject of criticism, was a pre-trial detention statute that had given rise to intense debate and frequent judicial review, in the course of which numerous safeguards had been provided under the Constitution or built into the Act itself with the aim of preventing arbitrary detention or even prolonged detention without judicial review. Subsequent court decisions had further strengthened those safeguards. In addition, the central Government, which had not ordered a single detention under the Act, closely monitored its administration by state governments, impressing upon them that it must be resorted to judiciously, sparingly and only to the extent necessary.

28. Concerning the impact of internal disturbances, he said that documentary material establishing the profile of terrorist violence in the disturbed areas had been distributed to members of the Committee, and demonstrated the effect of such violence on the rights of innocent citizens in general, as well as specific categories of persons, such as journalists, political activists, members of the judiciary, government officials and policemen and their families. India, like other pluralistic, democratic and secular societies, was especially vulnerable to the forces of political extremism; the deadly combination of violence, extremism and intolerance that terrorism embodied was a negation of all the liberal values that sustained the concept of human rights. But besides making determined efforts to combat terrorism, the authorities had launched a series of initiatives to resolve the problems and improve the situation in the affected areas. They included unconditional political dialogue and programmes of social and economic development in the north-eastern states, and moves towards the restoration of democratic governance following free and fair elections in Punjab. In Jammu and Kashmir, a major programme of economic rehabilitation and acceleration of development activities was under way. There were visible signs of a return to normal in

the lives of the people and activities of the local government and administration, although external forces persisted in their attempts at violence, largely through foreign nationals and mercenaries.

29. India was committed to combating the menace of terrorism and to defending its territorial integrity against all threats, but there was an equal determination that any measures in that connection must be in strict compliance with national laws and human rights standards. Despite the extremely difficult situations in which the security forces had to operate, they could never benefit from impunity of any kind; whenever allegations of human rights violations were made, inquiries were immediately conducted, charges laid and offenders prosecuted.

30. Mr. GUPTA (India), replying to question 2, said that the use of weapons by the police was normally permitted for three purposes: in the exercise of the right of self-defence; for dispersal of unlawful assemblies; and, under certain circumstances, to effect an arrest. In self-defence, no more harm than was necessary for that purpose should be inflicted, but death could be caused if the offence that occasioned the exercise of the right could be reasonably expected to cause an apprehension of death or grievous hurt. The decision to disperse unlawful assemblies was normally taken by a magistrate, and exceptionally by an officer of the armed forces of the Union. It could be implemented through the graduated use of force, after due warning had been given; it must not go beyond the necessary minimum and must cease as soon as the assembly broke up. Shots might be fired, even to the extent of causing death, but only as an extreme measure and in clearly established circumstances.

31. The actions he had described were the subject of various instructions, guidelines and clarifications designed to prevent any abuses in the exercise of the powers conferred on State police agencies or the armed forces of the Union in connection with the maintenance of public order. Even when the special forces were acting under the Armed Forces (Special Powers) Act in disturbed areas, the use of force which might entail firing was still limited to the three basic sets of circumstances that he had mentioned at the beginning of his statement. But the conditions could be far more complex and difficult, and he offered some examples, firstly in relation to unlawful assembly which contained perceptible threats to life and property, secondly in relation to the process of arrest and seizure, and thirdly in relation to other situations which placed the police or security personnel at grave risk. Again, elaborate guidelines and instructions were issued to such personnel; they were not legally binding but failure to comply with them could be actionable.

32. A hierarchy of forces existed within the armed forces of the Union. He listed the different bodies which were specially trained and equipped for different roles within the overall functions of maintaining public order and combating terrorism and insurgency, and described in detail the equipment and operations of one of the largest among them - the Central Reserve Police Force (CRPF). All those forces, as had already been pointed out, were expected to intervene to assist state authorities and the local police, which bore principal responsibility for dealing with crowd control and law-and-order situations.

33. It was difficult to determine the number of deaths that had resulted from the use of the powers vested in the security forces in the disturbed areas, given the fact that those forces generally acted in concert with the local police. The Committee had, however, been provided with figures of casualties among civilians, terrorists and security force personnel to assist it in obtaining an overall picture of the situation.

34. As to the monitoring of compliance with the regulations governing the use of weapons by the police and security forces, he listed and described six mechanisms. Firstly, the legislation itself must serve as a check: forces acting in pursuance of the law could not be above the law. Secondly, the standard requirement that security forces file daily situation and incident reports, as well as existing procedures for the lodging of complaints, permitted the identification of occasions involving firing and casualties. Thirdly, the state governments were also required to provide the central Government with daily situation reports, which were followed up by the latter whenever prima facie it appeared that an incident involving the security forces required further investigation. Fourthly, units (nodal cells) set up in each of the security force organizations and in the Ministry of Home Affairs also monitored reports of alleged human rights violations and took follow-up action. Fifthly, citizens affected in actions by the security forces could file their own reports, which were regularly investigated and could lead to the prosecution of security personnel. Lastly, remedies such as the filing of petitions before the High Courts or the National Human Rights Commission were available: investigations duly took place, allegations could be challenged and prosecutions could be ordered.

35. Thus, no fewer than 315 security force personnel had been prosecuted or otherwise proceeded against for human rights infringements or for violations of the law or the guidelines in Jammu and Kashmir and the north-eastern states. Other cases were pending, and the Government was determined to see that they were pursued promptly. As to the security forces themselves, they did not welcome the presence in their ranks of persons who had acted in wilful disregard of the law, and made every effort to ensure that possible loss of civilian life and property at the hands of their personnel, acting entirely in good faith, was minimized, that overreaction was avoided and that maximum restraint was observed in their operations.

36. Mrs. Medina Quiroga took the Chair.

37. Mr. KRISHAN SINGH (India), replying to question 3 on the list of issues concerning extrajudicial executions, disappearances and torture, said that the Government had received a number of complaints through the mechanisms that existed for the purpose: individual complaints filed through First Information Reports (FIRs) registered with the police, media reports, NGOs and branches of the National Human Rights Commission. Several reports had been received from the courts and from the National and State Human Rights Commissions. Complaints were also taken up and debated in state legislatures and in the federal Parliament, and in some cases complainants had simultaneously approached courts of law and the National Human Rights Commission. Every effort was made to have the complaints investigated

immediately and, where specific human rights violations were found to have been committed, action was taken to provide redress to the complainant and to punish errant officials.

38. There were also specific provisions in the statutes of the armed forces establishing a procedure for investigations and trials. Action taken to punish officials of the security forces for violations of human rights in Jammu and Kashmir and in the north-eastern region included punishments ranging from a variety of disciplinary measures to 12 years' rigorous imprisonment. Punishments such as reprimands, although seemingly innocuous, had serious career implications. Efforts were also being made to publicize actions taken, with a view to building confidence among those who might have been affected as victims and emphasizing the sensitivity of human rights issues among armed forces personnel.

39. The brunt of the terrorist attacks in Punjab had been borne by the Punjab State armed police and consequently they were the object of most of the complaints of alleged human rights violations. A number of police personnel had been dismissed and had suffered various other penalties. Both the Supreme Court and the National Human Rights Commission had taken a direct interest in human rights violations in Punjab, and the Central Bureau of Investigation was reporting its findings regarding such allegations directly to the Supreme Court. The Supreme Court had also requested the Commission to look into various issues, including compensation, and had declared that its orders would be binding on that question. The High Court of Jammu and Kashmir was directly supervising investigation of allegations of certain human rights violations in the State.

40. In a recent judgement in West Bengal, the Supreme Court had laid down guidelines to prevent violations with reference to arrests by the police, and in a case involving petitions filed by the Andhra Pradesh Civil Liberties Committee pertaining to alleged extrajudicial executions by the police in alleged encounters with a left-wing terrorist organization called the "People's War Group", the National Human Rights Commission had made certain recommendations and issued guidelines which had been conveyed to the Chief Ministers of all States.

41. The Government was committed to ensuring that measures to combat terrorism were in accordance with national laws and human rights standards, and had been making every effort to ensure that the security forces exercised maximum restraint in their operations. It had made it very clear to all its officials that no one should enjoy impunity in matters pertaining to human rights violations. Clear instructions had been issued to the security forces on the conduct expected of them during operations against militant groups.

42. The Government was also implementing a programme of human rights education for the security forces in association with the National Human Rights Commission. The Chief of the Army Staff had issued an order for all personnel to observe and respect human rights in the performance of their duties, and army personnel carried a copy of those "do's and don'ts" at all times. They included co-opting representatives of local civilian authorities for conducting search operations, not resorting to firing without due warning and absolute necessity, turning over arrested persons to the nearest police

station with the least possible delay, and arresting only those who had committed cognizable offences or against whom a reasonable assumption existed that they had committed or were about to commit a cognizable offence.

43. Mrs. Chanet resumed the Chair.

44. Mr. DESAI (India), replying to question 4 regarding the National Human Rights Commission, said its main objective was the protection of human rights defined by the Protection of Human Rights Act (1993) as rights relating to the life, liberty, equality and dignity of the individual and guaranteed by the Constitution and by the two Covenants. The Act provided that the Commission might inquire, suo moto or on a petition presented to it by a victim or any person on his behalf, into a complaint of violation of human rights or abetment thereof or negligence in the prevention of such violation by a public servant. It could also intervene in any proceeding involving such an allegation pending before a court with the court's approval, and visit detention centres. While inquiring into complaints, the Commission had all the powers of a civil court and could also use a provision under the Code of Criminal Procedure to authorize its officers to seize documents relating to the subject matter of an inquiry. The Commission had its own investigating staff under an officer holding the rank of director-general of police.

45. In the period from 1 April 1995 to 31 March 1996, the Commission had registered 10,195 complaints, including allegations of death in custody, disappearance, illegal detention, police excesses, atrocities against scheduled castes and scheduled tribes, indignity to women and cases of environmental degradation. In the same period the Commission had admitted 444 cases of death in custody and 1,115 cases of torture and other abuses; 79 police officers had been suspended, departmental action had been taken against another 26, and 22 others had been prosecuted as a result of the Commission's recommendations. Compensation ranging from Rs 25,000 to Rs 1 million had been awarded to 22 persons in 13 cases. In two recent cases, the Commission had taken the view that compensation due to the next of kin of victims should be the liability not only of a state but also of the offending police officials themselves; state governments concerned had accepted that view.

46. In its report for 1995-1996 the Commission had stated that there had been no instance of a state government or other authority refusing to accept or comply with recommendations it had made in respect of individual complaints. Where necessary, it had applied to courts for the enforcement of human rights in individual and group cases. In 1996-1997, on the basis of investigations carried out by its investigation division, criminal prosecutions had been launched against 167 persons, 144 of them policemen; 113 policemen had been suspended and departmental action initiated against another 116. Compensation ranging from Rs 50,000 to Rs 150,000 had been ordered for 16 persons in 10 cases.

47. Section 18 of the Protection of Human Rights Act (1993), empowered the Commission to conduct detailed inquiries into cases involving other authorities, and section 19 required it, with regard to complaints of human rights violations by the armed forces, to seek a report from the central Government and, after receiving that report, either not to proceed with the

complaints or to make its recommendations to the Government. That provision had not constrained the Commission in scrutinizing the actions of the armed forces. Whenever in doubt about the value of a report submitted to it, the Commission had sought supplementary reports on the facts or conclusions which it considered to be either ambiguous or wrong, and it had not hesitated to request senior armed forces officers to appear before it in order to answer questions regarding the complaints being considered. Its reports to Parliament showed that the armed forces had readily complied with requests for further information either in written or in oral form. In each instance of recommendations made by the Commission, the central Government had informed it as required of the action taken. The Commission had also made its report public, together with its recommendations and the action taken, and had as required informed the petitioner or his representative of the outcome.

48. As to the provision in section 36 of the Act barring investigations into allegations more than one year old, the Government had given serious consideration to the Commission's recommendations and had concluded that more time and experience were needed before any changes were contemplated to the existing legislation. While there had been approximately 65 complaints every month during the first six months of the Commission's existence, that figure had now risen to nearly 4,000 a month. That increase suggested a heightened level of public confidence in the Commission, but it would also appear to have some significance with reference to the question of the bar on investigations into allegations more than one year old.

49. Replying to question 5 on the list of issues, he said that as far as the substantive law was concerned, the specific anti-terrorism legislation - the Terrorist and Disruptive Activities Act - had lapsed but various component elements of acts of terrorism were provided for in the Indian Penal Code, the Indian Arms Act, the Indian Explosives Act, the Unlawful Activities (Prevention) Act, etc. Information had already been provided regarding terrorist violence in areas that had been declared as disturbed, and there had been similar incidents perpetrated by left-wing extremists in Andhra Pradesh, Bihar and other states and by terrorists from various groups in other parts of the country, including Bombay and Delhi.

50. Treason was covered by offences defined by sections 121, 122 and 124 A of the Indian Penal Code relating to waging war against India and sedition; provisions for acts akin to treason could be found in the Constitution and in such statutes as the Unlawful Activities (Prevention) Act. Crimes pertaining to treason had generally been found to be accompanied by acts of violence which could be categorized as terrorism or threats to the public order.

51. Activities prejudicial to the defence of India, its relations with foreign Powers or the security of the State, and activities prejudicial to the maintenance of public order or of supplies and services essential to the community could form the basis for detention under the preventive law, but the relevant order must be supported by full and detailed grounds and material giving all particulars so that the detainee could make a full representation for consideration on its merit by an independent board. The order itself was also subject to judicial review. There were safeguards and remedies under the Constitution for arrests made for any such offences, and their investigation and prosecution were covered by the normal checks and procedures under the

Code of Criminal Procedure. As to detention under the National Security Act, mechanisms for control and safeguards were provided in the Act and implemented by the courts.

52. Currently 673 persons were in detention under the National Security Act, and some 1,588 persons under the Terrorist and Disruptive Activities Act. The figures were constantly being monitored by the courts and by the Government.

53. Mr. KRISHAN SINGH (India), replying to question 6, said that scheduled castes and scheduled tribes enjoyed a special status under the Constitution. Their welfare was a matter of the highest priority, and measures had been taken to ensure their effective involvement in the administration of the country and their social and economic betterment. The Government had adopted a two-pronged approach to ensure effective protection of their rights and to improve their socio-economic status. The National Commission for Scheduled Castes and Scheduled Tribes was part of the institutional framework, and the Special Component Plans played an important role by concentrating financial resources on education, the upgrading of skills and assistance for self-employment activities. The Special Component Plans channelled funds through specific schemes, and state governments, Union Territories and Union ministries were required to earmark funds under such schemes at least in the same proportion as the population of scheduled castes and scheduled tribes in the situations concerned. The adoption of the Special Component Plans had led to a significant improvement in the socio-economic status of those communities.

54. The National Commission also played an important role in ensuring focused attention on the problems faced by those vulnerable communities. It had mainly been a question of taking up grievances with the authorities concerned and making on-the-spot inquiries into allegations of atrocities. In the period 1993-1994 the National Commission had undertaken 44 such field inquiries and made the appropriate recommendations to the authorities for immediate action. Its plans for the future included setting up a data bank and an economic cell to oversee implementation of development programmes; it also proposed to set up a free legal aid cell in all State capitals and to intervene in all court cases involving policy matters that had a bearing on the welfare of members of scheduled castes and scheduled tribes.

55. A deep-rooted social system such as caste could not be merely legislated away: time would allow social practices to change through the spread of education as well as through economic and social development, but such change could not be brought about by government action alone and must involve all actors in civil society and NGOs through awareness-raising and education programmes. At the same time, abhorrent facets of the caste system such as untouchability had no place in a society that upheld human rights on the basis of equality and non-discrimination. The Government remained vigorously committed to combating the practice of untouchability and social prejudice against members of scheduled castes. India's national policy on education attached specific importance to the promotion of national integration, tolerance, mutual understanding and communal harmony, and material on the lives and teachings of the social reformers of the past who had fought

caste-based discrimination formed an integral part of school and college textbooks. Various initiatives were also being taken to promote inter-caste harmony through the electronic and print media.

56. The most formidable challenge to the traditional division of Indian society was being launched by members of the underprivileged communities themselves: they were becoming increasingly conscious of their rights and asserted themselves against any form of discrimination. As education and empowerment spread, the established order was challenged. Many of the conflicts and clashes occurred because India was moving towards the effective enjoyment of equality for all segments of its population.

57. Turning to question 7 concerning bonded labour, he said that symptoms of extreme poverty should not be confused with deliberate human rights violations by states. There were many problems that resulted from a lack of adequate access to basic needs, illiteracy and low levels of economic development, and bonded labour and child labour were among them. The Government had the responsibility to work towards eradicating such practices through the enactment and strict enforcement of laws. The promotion of literacy and awareness of legal rights were also of crucial importance. Advances in such areas required the involvement of all actors in civil society from local bodies and NGOs to individuals.

58. The Government attached the highest importance to the total eradication of bonded labour. Priority areas included carrying out new surveys to detect cases of debt bondage or relapse, to ensure effective rehabilitation through dovetailing the centrally-sponsored scheme with other anti-poverty schemes, and to activate fully the district and subdivisional-level vigilance committees in which NGOs participated. Instructions had also been issued to all state governments to conduct surveys to identify bonded labourers: in that way some 27,760 bonded labourers had been identified between October and December 1996, the majority in the State of Tamil Nadu. States had been advised to draw up schemes for their rehabilitation. Efforts were also under way to target released bonded labourers through anti-poverty and employment-generation programmes, and to sensitize government officials to the problem. The figures for prosecutions under the Bonded Labour System Abolition Act (1976) showed that by March 1993 there had been a total of 3,143 cases in 12 states, 1,190 of them resulting in convictions.

59. Mr. VENU (India), replying to question 8 (a) on gender equality, said that in India women had been granted equal political rights at the time of independence, and since then a conscious effort had been made to increase their presence at all levels of responsibility in Indian society. Indeed, a bill to reserve one third of seats in Parliament and state legislatures for women was currently before Parliament, and a lively debate on it was under way. Parliament had also recently set up a committee for the empowerment of women. While a large presence of women in public life had been achieved, the challenge now was to ensure that they were given real powers and real responsibilities: India had a long way to go before it could say that women had become the equal partners of men in all aspects of national life.

60. However, the political participation of women rivalled, and in some areas surpassed, that of men. In the 1996 general election, the turnout of

women voters had been 53 per cent as against a total turnout of 57 per cent, and 599 women candidates had stood for election to Parliament: there were now 40 in the Lower House and 19 in the Upper House, and 5 women members of the Council of Ministers. Nearly 1 million women took part in public life at village and district level, and they accounted for 8.93 per cent of officers in the Administrative Service and 11.28 per cent of officers in the Foreign Service.

61. Although by 1995 women had made up 15 per cent of the total labour force, their access to employment was still to a great extent related to their access to education and skills, and they still lagged behind men in terms of literacy. Nevertheless, the number of women employed in the technical and professional fields had increased 23 times since the 1950s. Although it was difficult to quantify their participation in social and cultural life, they played a prominent role in music, dance, literature, cinema and all aspects of social work.

62. On the subject of inequalities in laws governing marriage, divorce and inheritance, he explained that as part of a policy of protecting the cultural identity of various communities, particularly religious minorities, India allowed different communities to maintain their separate laws in that respect. If social change was to be achieved, legislation could only be based on consensus among the affected segments of the population, and the Government's approach had therefore been to proceed with caution and to wait for demands for reform to come from within the communities themselves. It was noteworthy that, following such a demand for reform from the Parsi community, the Parsi Marriage and Divorce Act had been amended to give equal rights to women. India had also taken a number of steps to fulfil the pledges it had made as part of the Beijing Programme of Action, and was making additional resources available for a number of programmes designed to improve the status of women.

63. Laws prohibiting child marriage were being successfully enforced, as could be seen from the fact that the average age of marriage for women had risen from 13 years at the beginning of the century to 19.5 years in 1992. In 1994, 714 child marriages had been prevented. The National Human Rights Commission had made recommendations for amending the Child Marriage Restraint Act (1929) and decentralizing powers under that Act to authorities at district and village level. A Marriage Bill was now under preparation and was expected to have a considerable effect in reducing the incidence of child marriage; a mass media campaign had been launched to increase public awareness of the issue. However, child marriage was a legacy of traditions that still persisted in India's villages, and those traditions could not successfully be countered through legislation alone. Higher levels of literacy and social awareness were needed, and society in general and NGOs in particular had an important role to play in eradicating the problem.

64. Mr. DESAI (India), responding to question 8 (b) on violence against women, said that since the submission of India's previous periodic report a new Act had been passed to regulate sex-determination tests and prevent their misuse, and certain states had taken steps to ban female foeticide. In 1994, 131 cases of infanticide and 45 cases of foeticide had been recorded. Education programmes had been introduced in an effort to bring about a change in society's attitude towards the girl child, and a number of states had

launched schemes designed to raise the girl child's status. In addition, a national plan of action focusing on the survival, protection and development of the girl child had been formulated, and amendments to the regulations governing the code of medical ethics were being planned to permit disciplinary proceedings to be taken against doctors who had acted unethically in that respect.

65. Between 1993 and 1994, dowry deaths had declined by more than 15 per cent in most of the country, and in 1994 only two cases had been reported under the Commission of Sati Prevention Act. The figures showed that the measures taken were having the desired effect, and the practice was now virtually non-existent in most states.

66. Cases reported under the Immoral Traffic Prevention Act had likewise shown a decline between 1991 and 1994. Certain areas of the country, notably the Murshidabad district of West Bengal, tended to be source areas for prostitution, and the Government had launched a silk yarn production training project in a group of villages in the district in an effort to solve the problem through economic development.

67. Concerning child prostitution, data on the importation of girls were now being collected on a systematic basis: 167 such cases had been reported in the country in 1994. Since that date, there had been 206 cases of procurement of minor girls, and 34 cases of sale of girls for prostitution. Reporting of such cases was being encouraged, and gender-segregated data were being compiled. A survey carried out in 1991 had indicated that child prostitutes accounted for some 15 per cent of the total number of prostitutes in India, and to combat that evil a separate unit was being set up in the Ministry of Human Resource Development. In addition, the problem was being studied by a group consisting of representatives of governmental bodies and NGOs, which had convened six regional workshops on the subject.

68. Mrs. CHADHA (India), in reply to question 9 on child labour and street children, said parental poverty and illiteracy were the two most important factors contributing to the existence of child labour. Parents sent their children to work rather than to school simply because there was no other option for ensuring their own survival. To tackle that problem, the Government planned to introduce a bill which would make primary education a fundamental right. It had also pledged to eradicate child labour in all occupations and had launched a frontal attack on parental poverty through employment generation programmes. More than 100 child labour rehabilitation projects had been initiated: under those projects, special schools had been set up in 76 districts where child labour was endemic, and 104,000 children had so far been admitted to them. Special awareness-raising programmes had also been undertaken in 133 districts. In a landmark judgement delivered in December 1996, the Supreme Court had ordered that employers of children in hazardous occupations were liable to a fine of Rs 20,000 for each child employed, as well as to penal sanctions. While statistics on the number of prosecutions initiated were not yet available, many state governments had reported that they were taking steps to prosecute whenever children were found to be employed in hazardous occupations. At the same time, action was being taken to set up a Child Labour Welfare and Rehabilitation Fund at district level.

69. On the question of street children, it was estimated that as many as 500,000 children lived on the streets of India's seven major cities - Bangalore, Bombay, Calcutta, Delhi, Hyderabad, Kanpur and Madras. Most of them came from poor migrant families, and many suffered from neglect, abuse and exploitation because their situation made them especially vulnerable to harassment. A scheme had recently been launched to support and strengthen voluntary organizations already working for the welfare and development of street children, with the aim of providing integrated community-based non-institutional services. The scheme included action to reduce exploitation and abuse and to withdraw children from hazardous work. Forums representing some 60 NGOs had been established in 23 cities, and a national NGO forum had been set up in 1988 to promote collective action for this vulnerable group.

70. Mr. ANDO expressed appreciation for the extensive information provided by the delegation. On the question of gender equality, he had been impressed to learn that a bill was being introduced whereby 30 per cent of seats in Parliament were to be reserved for women: that was a remarkable advance. However, he would like to know what concrete measures were being taken to reduce female illiteracy rates. He would also appreciate more information on the difference between the inheritance rights of men and women, on how much matrimonial property a woman could claim from her husband on divorce, not only in law but also in practice, and on the legal marriageable age for women. Mention had frequently been made of the part played by NGOs in solving social problems. What precisely was their role and what was the extent of their competence?

71. He would like to know more about the causes of the phenomenon of child labour. Were they purely economic, the result of parental poverty, or were social factors involved? On child prostitution, he would appreciate an explanation of the so-called Divadasi system. Lastly, he asked whether bonded labour was found chiefly in the agricultural sector or whether it also prevailed in other sectors, what percentage of bonded labourers were of the untouchable caste, and how far NGOs were involved in efforts to overcome that phenomenon.

72. Mr. KRETZMER said he was pleased to note the positive developments in India since the submission of its last report, notably the creation of the National Human Rights Commission.

73. Referring to question 1 on the list of issues concerning states of emergency, he said that while he was aware of the difficulties India had to face in dealing with insurgency and terrorism, it was nevertheless incumbent on a State party to tackle such problems in a manner consistent with the Covenant's requirements. The delegation had earlier stated that India had made no legal declaration of a state of emergency under article 4 of the Covenant. However, he was concerned that de facto declarations of emergency had in fact been made in certain parts of the country, which were not in line with the Covenant's provisions. That would seem to be the case in regard to the Armed Forces Special Powers Act, the National Security Act and the Restricted Areas Permit Act.

74. The Committee had been told that the first of those Acts was needed because there were insufficient police in the various states to deal with

outbreaks of armed violence. He appreciated the need to send in the army, but did not understand why it was necessary to give them special powers, since presumably there were already regulations governing their use of weapons. The Act seemed to him an attempt to derogate from a non-derogable right under the Covenant, namely the right to life. He had raised the question because the Committee was receiving persistent reports of excessive use of force, especially by the army, in areas of conflict.

75. He noted that the Act in question provided that no prosecution, suit or other legal proceedings could be instituted, except with the sanction of the central Government, in respect of anything done in pursuance of the Act. If the army was being sent in to help a state government, that government should at least be able to inquire into any allegations of misuse of force. He was concerned to see from a recent court case that when the government of the State of Manipur had tried to set up a commission of inquiry into allegations against the security forces, the central Government had argued that that State had no powers whatever to set up that inquiry.

76. The National Security Act would appear to raise even more problems, particularly in regard to preventive detention, which was decided on by an advisory board. Members of that board were appointed by the executive, which would mean they could also be dismissed by the executive. That appeared to contravene a detainee's right under article 14 of the Covenant to be tried by an independent and impartial tribunal. India had not made a declaration under article 4 that it wished to derogate from article 14.

77. Again, article 9, paragraph 2, of the Covenant required that a person should be informed of charges against him at the time of arrest, but the Committee had been told that such information was not given until 5 or even 10 days later, which constituted a further derogation. The Act stated that a person was not entitled to be represented before the advisory board, which would seem to pose further problems regarding article 14.

78. On the matter of impunity of the armed forces, he appreciated the delegation's assurance that the Government was committed to prosecuting all members of the forces charged with violence or other offences, but certain reports had cast doubt on whether that policy was being pursued effectively. Why, for instance, was the National Human Rights Commission not given powers to investigate allegations of use of undue force by the army? He noted that on 6 February 1997 the Supreme Court had decided to grant compensation to a family in the State of Manipur, some of whose members had been killed by army officers. Had the officers involved been suspended? And were they being prosecuted? He would also like to know whether prosecutions had been initiated in two further cases, the first involving an attack by members of the armed forces on a hospital patient, and the second involving a Mrs. Devi, who had been killed by officers of the Thirtieth Battalion, Assam Rifles, in view of the fact that in both cases the members of the armed forces concerned had been found to be responsible following a judicial inquiry.

79. Lastly, again on the issue of impunity, he would appreciate information on the Restricted Areas Permit Act, which as he understood it restricted access by NGOs and others to areas in which the armed forces were operating.

The meeting rose at 1.05 p.m.